

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61220; File No. SR-NYSEArca-2009-94)

December 22, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading Shares of the ETFS Palladium Trust

I. Introduction

On October 20, 2009, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the ETFS Palladium Trust (the “Trust”). The proposed rule change was published for comment in the Federal Register on November 17, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares. The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.

The Shares represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the performance of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60971 (November 9, 2009), 74 FR 59283 (“Notice”).

price of palladium, less the expenses of the Trust's operations.⁴

The Exchange deems the Shares to be equity securities, which subjects trading in the Shares to the Exchange's existing rules governing the trading of equity securities, and has represented that trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has also represented that it has appropriate rules to facilitate transactions in the Shares during all trading sessions.

Additional details regarding the Shares and Trust including, among other things, creations and redemptions of the Shares, the organization and structure of the Trust, custody of the Trust's holdings, Trust expenses, Trust termination events, the international market for palladium, the palladium futures market, the dissemination and availability of information about the underlying assets, trading halts, applicable trading rules, surveillance, and the Information Bulletin can be found in the Notice and/or the Registration Statement.⁵

III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,⁷ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to

⁴ Amendment No. 2 to the Registration Statement for the ETFS Palladium Trust on Form S-1, filed with the Commission on October 20, 2009 (No. 333-15830) ("Registration Statement").

⁵ See supra notes 3 and 4.

⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In addition, the Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,⁸ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association CQ High-Speed Lines. The Trust's Web site will provide the following information: (1) an intraday indicative value ("IIV") per share for the Shares, updated at least every 15 seconds, as calculated by the Exchange or a third party financial data provider, during the Exchange's Core Trading Session (9:30 AM to 4:00 PM, Eastern Standard Time); (2) the net asset value ("NAV") of the Trust as calculated each business day by the Sponsor; (3) the NAV, on a per Share basis, as of the close of the prior business day; (4) the mid-point of the bid-ask price⁹ at the close of trading in relation to such NAV ("Bid/Ask Price"); (5) a calculation of the premium or discount of such price against such NAV; (6) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the per Share NAV, within appropriate ranges, for each of the four previous calendar quarters; (7) the Creation Basket Deposit; (8) the Trust's prospectus; (9) the two most recent reports to stockholders; and (10) the last sale price of the Shares as traded in

⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).

⁹ The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

the US market.¹⁰ In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured.

Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it must halt trading in on NYSE Arca Marketplace until such time as the NAV is available to all market participants. The Commission notes that the Exchange will obtain a representation from the Trust that the NAV per Share will be calculated daily and that the NAV will be made available to all market participants at the same time.¹¹ Additionally, if the IIV¹² is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.¹³ Further, the Exchange will consider the suspension of trading in or removal from listing of the Shares pursuant to NYSE Arca Rule 8.201(e)(2) if: (1) the value of palladium is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange or the Exchange stops providing a

¹⁰ The Exchange will provide on its Web site (www.nyx.com) a link to the Trust's Web site.

¹¹ See e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, and Andrew Madar, Special Counsel, Commission, dated December 10, 2009.

¹² For the Shares, the Exchange uses IIV and ITV interchangeably. See e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated December 22, 2009.

¹³ See id.

hyperlink on its Web site to any such unaffiliated commodity value; or (2) the IIV is no longer made available on at least a 15-second delayed basis. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which conditions in the underlying palladium market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.

In addition, NYSE Arca Equities Rule 8.201 sets forth certain requirements for ETP Holders acting as registered Market Makers in the Shares. Pursuant to NYSE Arca Equities Rule 8.201(h), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in palladium, related futures or options on futures, or any other related derivatives, which the Market Maker may have or over which it may exercise investment discretion. NYSE Arca Equities Rule 8.201(i) also prohibits an ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in palladium, related futures or options on futures or any other related commodity derivatives.

In support of this proposal, the Exchange has made representations, including:

- (1) The Shares will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.201.

- (2) The Exchange’s surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Pursuant to NYSE Arca Equities Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Shares and the underlying palladium, palladium futures contracts, options on palladium futures, or any other palladium derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders’ proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members of the ISG.
- (3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) how information regarding the IIV is disseminated; (d) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (e) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result

of reduced liquidity of palladium trading during the Core and Late Trading Sessions after the close of the major world palladium markets; and (f) trading information.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁴ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-NYSEArca-2009-94), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).